

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1980 of 2002

For Approval and Signature:

Hon'ble HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
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REMANI MENON

Versus

K.G. OMNAKUTTAN SUPERINTENDING ENGINEER

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Appearance:

1. Special Civil Application No. 1980 of 2002  
MS DAXA R VYAS for Petitioner No. 1-2  
MR NK MAJMUDAR for Respondent No. 1  
M/S TRIVEDI & GUPTA for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 27/08/2003

#### CAV JUDGEMENT

1. The short facts of the case are that petitioner No.1 is the alleged wife and petitioner No.2 is the daughter born during the wedlock of petitioner No.1 and the respondent on 18-4-1988. The respondent husband is serving as Superintending Engineer (Production) in Oil and Natural Gas Commission (ONGC) It appears that the petitioner preferred petition in the Family Court for getting permanent maintenance of Rs.20,000/= per month and other reliefs alleging that the petitioner has no independent sources of income and the respondent has left the petitioner and her daughter. It is alleged in the application that the respondent husband is serving in ONGC on a very high post and the income of the respondent is about Rs.40,000/= per month as salary. The petitioner submitted in the said proceedings, an application Ex.4 for interim maintenance of the same amount of Rs.20,000/= per month and in the said interim application, the petitioner had also prayed for permanent injunction restraining the respondent husband from getting any amount under voluntary retirement scheme and also for prohibiting the ONGC from allowing the respondent to withdraw any amount from the provident fund, gratuity and other benefits. The learned Judge of the Family Court No.4 heard the application Ex.4 and has passed the order on 19-12-2001, whereby the application is partly allowed and it is ordered that the respondent shall pay an amount of Rs.2,500/= per month to the petitioner for the interim maintenance of her daughter Shruti from the date of filing of the application i.e. 15-12-2000 and the learned Judge has also ordered for payment of legal expenses of Rs.1,000/= to the petitioner for the expenses, incurred by her, being the guardian of the minor Shruti. The petitioners herein under these circumstances have approached this Court by preferring the present petition.

2. I have heard the learned Counsel appearing for the petitioners, Ms.Daxa Vyas and Mr.Majmudar, learned Counsel appearing for the respondent. Before I proceed to consider the other aspects of the case, it is required to be taken note of that when this petition came to be admitted on 16-4-2003 by this Court (Coram: Miss R.M.Doshit, J.), by interim order it was directed that the respondent shall pay interim maintenance at the rate of Rs.5,000/= p.m. to the minor daughter-Shruti every month and the said amount from the date of the order is being paid by the respondent to the petitioner as ordered

by this Court.

3. The law on the question of quantum of maintenance is well settled in as much as it should commensurate with the status of the family of the husband. The respondent husband is holding the post of Superintending Engineer of ONGC and pursuant to the order passed by this Court, Mr.Majmudar, during the course of the hearing, had placed on record the salary slip for the month of May, 2003 (fax copy of the said salary slip is produced), which shows that Rs.44,529/= is the total salary payable to the respondent by ONGC. However, since the respondent husband has taken loan from CPF, for Car and Computer, the amount of deduction shown is of Rs.32,485/= and the net amount paid is shown as Rs.12,045/=. Of course, while considering the income of the husband, the deductions for the loans cannot be ignored, but at the same time, if the husband is to take loan for making investment, may be for construction of house or may be for car or for any other purpose and if such amount is deducted, naturally such amount of deduction cannot be said as not forming part of the income of the husband and, therefore, even on the basis of the pay-slip, which is produced by the respondent, it cannot be said that the income of the husband is, in any case, less than Rs.40,000/= per month.

4. It appears that the learned Judge, while considering the application Ex.4, has taken into consideration that earlier the respondent had married with one Shobhana in the year 1971 and the marriage of Shobhana is still in existence and the respondent has now compromised with Shobhana and is living with Shobhana. The learned Judge in the order has further recorded that the opponent therein had married with one Shobhana on 12-9-1971 and one daughter was born during the marital life with Shobhana. However, the learned Judge found that there was some dispute between the respondent and his legally wedded wife Shobhana and Shobhana along with her daughter had left Ahmedabad and they were residing at native place. The said Shobhana had also filed application for maintenance under Section 125 of Code of Criminal Procedure and she was also awarded maintenance by Criminal Court. The learned Judge further recorded that there is no evidence to show that there was divorce between the opponent and Shobhana. However, the learned Judge also found that from the documentary evidence produced by the petitioner, it appears that the petitioner and the opponent were living as husband and wife in one house since 1982 since the opponent had dispute with the legally wedded wife and the learned

Judge found that it is quite clear that one daughter was born due to the relations with the opponent to the petitioner and her name is Shruti. The learned Judge found that prima facie it is established that the opponent had entered his name as father in school records and other records lying with Life Insurance Company and therefore, it is clear that the opponent and the petitioner were living as husband and wife since 1982. However, the learned Judge found that since petitioner No.1 is not the legally wedded wife, she would not be entitled to get any interim maintenance from the opponent husband, but she would be entitled to get maintenance for her daughter from the opponent. Therefore, on the question of maintenance, the learned Judge has accepted the claim of the daughter, Shruti through petitioner No.1 as guardian.

5. The learned Counsel appearing for the petitioners submitted inter alia that the aforesaid findings of the learned Judge below the application for interim maintenance deserves interference, because as per her submission both the petitioner No.1 and the respondent lived as husband and wife and, therefore, she would be entitled for maintenance. She also relied upon the decisions of other High Court which are based on final decision to support her contentions. Since the main matter is pending before lower Court and present case is at the stage of interim maintenance, so far as petitioner No.1 is concerned, I find that the observations made by the learned Judge are only prima facie for the purpose of considering the case for interim maintenance and, therefore, it would be open to petitioner No.1 to lead proper evidence for establishing her status and till the matter is fully examined by recording all the evidence and cross-examination thereof. It will be for the petitioner to prove the case and it will be for the respondent to defend the same, but I am of the view that at this stage the said observations made by the learned Judge on the question of lawfulness of the alleged marriage of petitioner No.1 with the respondent does not call for interference.

6. However, the learned Judge while considering the question of maintenance qua the daughter found that the amount of Rs.2,500/= is the proper amount for maintenance. It appears that the learned Judge, while considering the income of the respondent-husband has taken into consideration that he is only getting Rs.18,000/=. As observed earlier, if the husband or father is to withdraw the amount for maintaining luxuries and thereby to slice down the income on paper, then the

same cannot be considered for the purpose of depriving the child from getting the maintenance as per the status of the father. As observed earlier, the record does show that the income of the respondent father is about Rs.40,000/= and out of the said amount, he is only to maintain Shobhana, who is, as per the respondent, the lawfully wedded wife and since the daughter born out of the relation with Shobhana is already married, in the family of the respondent there are only two persons namely; Shobhana and himself. Keeping in view the said status of the father and keeping in view the liability to be discharged by the father and the maintenance of Shobhana, I am of the view that the amount which the daughter, Shruti would be entitled for maintenance would be of Rs.10,000/= per month. It was also submitted on behalf of the petitioners that the daughter, Shruti is at present studying in 11th Standard Science Stream and for education purpose also an amount of Rs.42,000/= is required for paying the tuition fees and others and for such purpose the petitioner has also filed application being CA No.4715 of 2003, but since now the main matter is taken up for final hearing, the learned Counsel for the petitioners did not press the Civil Application, but she submitted that the said factum may also be considered. In my view, to some extent, the learned Counsel appearing for the petitioners is justified in pressing for the maintenance for daughter on the higher side, because the maintenance does not mean only the bare maintenance of food and clothing, but it does include the basic additional expenses for education of the child if the status of the father or the family is of such type. When the father of the daughter, Shruti is serving as Superintending Engineer in ONGC, which is a Class-I post, naturally had the father continued to live the life with the daughter, he would never expect the child to be illiterate or not properly prosecuting the studies. Since the daughter is studying in 11th Standard in Science Stream, I find that the aforesaid amount of maintenance of Rs.10,000/= shall take care of the situation, not only for the present studies, but for future studies too. Therefore, also I find that reasonable amount of interim maintenance for the daughter considering the status and the financial position of the respondent should be of Rs.10,000/= per month.

7. The learned Counsel appearing for the respondent submitted that as such the amount ordered for maintenance is Rs.2,500/= and, therefore, in case this Court finds that the amount of maintenance should be increased, then in that case, the arrears from the date of filing of the application would be very huge and it may run into lacs

of rupees. Therefore, Mr.Majmudar submitted that reasonable view of the matter may be taken so that the respondent can pay up the amount and at the same time he may also survive and may continue to live comfortably. In view of the aforesaid submissions and considering the facts and circumstances of the case, I find that this Court, when passed the order on 16-4-2003 directing the respondent to pay Rs.5,000/= as interim maintenance, the respondent should pay the amount of interim maintenance at the rate of Rs.5,000/= per month from the date of application before lower Court i.e. 15-12-2000 till the date of filing this petition before this Court, which is in the month of February, 2002. However, from the date of filing this petition and in future onwards, the respondent should pay the interim maintenance at the rate of Rs.10,000/= (Rupees ten thousand only) per month.

8. In view of the aforesaid observations and discussions, I find that the order dated 19-12-2001 passed by the learned Judge of the Family Court No.4 below Application Ex.4 in Family Suit No.1910/2000 shall stand interfered and shall stand modified to the effect that the respondent shall pay the interim maintenance to daughter Shruti at the rate of Rs.5,000/= per month from 15-12-2000 to February, 2002 and shall pay the interim maintenance at the rate of Rs.10,000/= per month from March, 2002 onwards. The respondent shall be entitled to have the set off of all the amount which is already paid by the respondent to the petitioners pending the petition before this Court pursuant to the interim order dated 16-4-2003 or any amount paid prior thereto, if any. The difference of the amount shall be paid by the respondent to the petitioner-daughter within a period of three months from today by instalments of one-third amount each payable every month and the first such instalment shall be paid on or before 30-9-2003. In addition to the above arrears, until the Family Suit No.1910/2000 is finally decided, the respondent shall continue to pay the amount of Rs.10,000/= per month as interim maintenance to the daughter Shruti and the same will be paid on or before 10th day of each next month.

9. The Family Court Judge is directed to give priority to the Family Suit No.1910/2000 and the learned Judge shall take up the matter after the amount of interim maintenance, as ordered, is fully paid and it is accordingly reported by either party and shall make an attempt to dispose of the suit as early as possible, preferably within a period of six months from the date of payment of all the arrears and its reporting.

10. The petition is allowed to the aforesaid extent.  
Rule made absolute accordingly. No costs.

27-8-2003 (Jayant Patel, J.)

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